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# SUBJECT INDEX


| | PAGE |
|---|---|
| GROUNDS FOR GRANTING THIS PETITION | 2 |
| STATEMENT | 3 |
| ARGUMENT | 5 |
| CONCLUSION | 10 |


## APPENDICES


| | |
|---|---|
| I. Opinion of Court of Appeals | 11 |
| II. Judgment of the Court of Appeals | 19 |
| III. Opinion of District Court | 20 |
| IV. The Contract for Tug Hire and Pilotage | 32 |


# INDEX OF AUTHORITIES

## CASES


| | |
|---|---|
| Denton v. Yazoo & Mississippi Valley Railroad Co., 1957, 284 U.S. 305 | 7 |
| Elf v. Dannen Grain & Milling Co., Inc., 7 Cir., 1960, 275 F.2d 352 | 8 |
| Fries v. United States, 6 Cir., 1948, 170 F.2d 726 | 8 |
| Jones v. George E. Getty Oil Co., 10 Cir., 1937, 92 F.2d 255, cert.den. 303 U.S. 644 | 7 |
| Parks Steamship Co. v. Cities Service Oil Co., 2 Cir., 1951, 188 F.2d 801, cert.den. 342 U.S. 862 | 2, 9 |
| States Marine Corporation of Delaware v. Victory Carriers, Inc., 9 Cir., 1959, 272 F.2d 463 | 2, 9 |

# Supreme Cour

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G. & H. T

EDWIN E. JOHANS
CO., MERRITT-CHA
PELICAN ISLAND
MARITIME OV

## PETITION

**Of Petition for Writ o**
**Court of Appe**

*To the Honorable the*
*of the Supreme Court*

G. & H. Towing C
fully petitions this Hon
of the order of this H
October 9, 1961, denyin

NO. 277

IN THE

# t of the United States

BER TERM, 1961

OWING COMPANY,

*Petitioner*

-versus-

SON, KANSAS CITY BRIDGE
PMAN & SCOTT CORP., AND
DEVELOPMENT CORP., AND
ERSEAS CORPORATION,

*Respondents*

## FOR REHEARING

**f Certiorari to the United States**
**eals for the Fifth Circuit**

*Chief Justice and Associate Justices*
*of the United States:*

ompany, petitioner herein, respect-
orable Court for a rehearing herein
lonorable Court entered herein on
g its petition for a writ of certiorari

to issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, and would respectfully show that there exist substantial grounds therefor although not previously presented, as follows:

## GROUNDS FOR ALLOWING REHEARING AND GRANT OF PETITION

The courts below have wrongfully held liable petitioner G. & H. Towing Company as the corporate tortfeasor which moved the vessel and liable as the master for the negligence of the pilot, found to be its servant in charge of the vessel movement, directly contrary to the clear and undisputed evidence that another and entirely separate corporation, Bay-Houston Towing Company, contracted to move the vessel (*i.e.*, to furnish tugs and a pilot to move the vessel), and did furnish under that contract the tugs and the pilot, and hence was the only corporation that could lawfully be found liable for the negligence of the pilot, its servant. That this pilot was in the general employment of and secured from or "borrowed" from petitioner is immaterial, because petitioner did not agree to move the vessel, did not have and had no authority to direct such movement or the pilot in charge of the towing operation. The pilot at the time was assisting in performing the Bay-Houston Towing Company contract, not petitioner's, and hence was subject to the orders of Bay-Houston Towing Company and was that contracting corporation's servant. Holding petitioner as the tortfeasor, when it never engaged to move the vessel nor agreed to perform the other corporation's contract to move the vessel, is contrary to the settled law and clearly erroneous and in direct conflict with decision of other Courts of Appeal,

namely in the cases of *Parks Steamship Co. v. Cities Service Oil Co.*, 2 Cir., 1951, 188 F. 2d 804, cert. den. 342 U.S. 862, and *States Marine Corporation of Delaware v. Victory Carriers, Inc.*, 9 Cir., 1959, 272 F. 2d 463, and the writ should be granted to correct such fundamental error.

## STATEMENT

Bay-Houston Towing Company made a written contract with respondent Maritime Overseas Corporation to furnish in certain named Texas ports all harbor tug service it would require, and at Galveston-Texas City to furnish pilotage for shifting vessels not having their own power. This contract was an exclusive one, obligating Maritime Overseas Corporation to obtain *all* such services it required *only* from Bay-Houston Towing Company. An exact copy, except for signatures, is reproduced as Appendix IV below.

The M/V HAR CANAAN, operated by respondent Maritime Overseas Corporation, did not have the use of her engines, and her agents desired that she be shifted within the confines of Galveston harbor. To perform its contractual undertakings and in strict conformity with the contract, Bay-Houston Towing Company caused the ship to be shifted by three tugs, only one of which it itself owned, and a "dead-ship" pilot, Emmett Gray. For all of these services Bay-Houston Towing Company rendered its bills to respondent Maritime Overseas Corporation and was paid in accordance with the contract. The amounts so billed and paid of course included tug hire and pilotage charges. The evidence establishing these facts is clear and complete, including copies of the bills so rendered and paid.

In the harbor movement of the ship so performed in accordance with the Bay-Houston Towing Company con-

tract, the M/V HAR CANAAN's anchor was dropped on and damaged a pipe line, and the trial court found the damage caused by the pilot's negligence.

The tugs so furnished to the ship under the contract with Bay-Houston Towing Company were actually operated by a separate and distinct corporation, petitioner G. & H. Towing Company, being chartered by it from the tugs' owners and manned and operated by it. The pilot, Emmett Gray, was in its general employment as its port captain. But G. & H. Towing Company was *not* a party to the contract between Bay-Houston Towing Company and Maritime Overseas Corporation, and it at no time agreed with Maritime Overseas Corporation to furnish tugs to the ship or to perform pilotage, having no contractual relations whatsoever with Maritime Overseas Corporation. Its contractual relations and agreements were *only* with Bay-Houston Towing Company (as well as with two other separate and independent tug-owning corporations).

Under its agreements with Bay-Houston Towing Company, petitioner was paid by Bay-Houston Towing Company (*not* by Maritime Overseas Corporation, to whom it rendered no bills nor presented any claims) a percentage of the amounts (both for tug hire and pilotage) contracted to be and actually paid to Bay-Houston Towing Company by respondent Maritime Overseas Corporation. Out of the portion paid to it by Bay-Houston Towing Company for the pilot's services, G. & H. Towing Company paid the pilot a percentage.

The libel *in personam* against the contracting towing company, Bay-Houston Towing Company, was dismissed by the trial court, and no appeal from that decree taken.

There was no evidence of fault in the operation of the tugs, and the trial court dismissed all claims against them *in rem*, and neither petitioner as operator of the tugs, nor Bay-Houston Towing Company, nor Suderman & Young Towing Company (the owner of two of the tugs) was held liable. No appeal was taken from these portions of the decree.

The vessel, held liable *in rem*, was allowed indemnity.

The pilot Gray was held personally liable and petitioner was held liable as his principal, by the trial court. The trial court decides that "Gray was acting within the scope and course of his employment by *G. & H. Towing Company* and was not a loaned servant *to the vessel or her operators.*" The Court of Appeals particularly states that Gray "was merely the person in direct command with respect to a dead ship towing operation," that this "is a mere case of towing service *furnished by G. & H. Towing Company* and performed by its port captain." (Italics ours.)

The decisions of the courts below holding petitioner liable have thus been based simply upon the principle of *respondeat superior*. It is urged respectfully yet with all earnestness that if these decisions are thus correctly decided on the principle of *respondeat superior*, they are plainly under the facts and the law wrongfully decided in that another corporate "superior" should have been held, namely Bay-Houston Towing Company, and not petitioner.

## ARGUMENT

There is not one scintilla of evidence that petitioner made any agreement with respondent Maritime Overseas Cor-

poration to move its vessels, or to furnish pilotage to it or its vessel. The only evidence, which is ample and undisputed, is that Bay-Houston Towing Company contracted and agreed with Maritime Overseas Corporation to furnish tug power and dead-ship pilotage, that is to say, using the language of the Court of Appeals, it agreed to perform the towing operation of shifting the dead ship within the harbor, and it (*not* petitioner G. & H. Towing Company) furnished the towing service performed by Captain Gray and the tugs. A determination that Captain Gray was *not* loaned by G. & H. Towing Company to the vessel is of course lawfully no determination that he was not the servant of Bay-Houston Towing Company. Petitioner would respectfully show that since it was Bay-Houston Towing Company which furnished his services to the respondent Maritime Overseas Corporation and the vessel strictly in compliance with its contract, Bay-Houston Towing Company was of course his employer and the master responsible for any of his acts as its servant, he being "loaned" to *Bay-Houston Towing Company* as its servant by petitioner G. & H. Towing Company, his general employer.

It hardly need be pointed out that the contract between Bay-Houston Towing Company and the vessel operator Maritime Overseas Corporation *in no place even mentions petitioner*. It expressly permits Bay-Houston Towing Company to use its own tugs and agents or the tugs of others. And it has no limiting words obligating it to use any particular personnel in performing the work of "Pilotage—Shifting Vessels Without Own Power."

There can be no doubt at all that Bay-Houston Towing Company could comply fully with its contractual obliga-

tions by engaging for the M/V HAR CANAAN any pilot whomsoever who had been licensed by the federal government to act as pilot in Galveston harbor waters. That it actually did engage an employee of petitioner who was so licensed is of no legal moment in determining whose employee pilot Gray was *at the time he was acting aboard the vessel.*

The leading case determining the test of responsibility for the actions of a servant whose general employer is a different company from the one whose work he was performing at the time of the casualty is of course the decision in *Denton v. Yazoo & Mississippi Valley Railroad Co.*, 1931, 284 U.S. 305, where the rule is thus clearly phrased:

> "When one person puts his servant at the disposal and under the control of another for the performance of a particular service for the latter, the servant, in respect of his acts in that service, is to be dealt with as the servant of the latter and not of the former."

What service could be more particular than having supervision of the towing operation here, which Bay-Houston Towing Company, *not* petitioner, agreed by its contract to perform and which the courts below have expressly held was being performed for respondent Maritime Overseas Corporation at the time of the casualty?

In *Jones v. George F. Getty Oil Co.*, 10 Cir., 1937, 92 F. 2d 255, cert. den. 303 U.S. 644, certiorari was denied and therefore there is certainly no disapproval of stating the rule governing in such cases as the instant one thus:

> "The ultimate test is: Whose is the work being done . . . The identity of the person who, in fact, directs the details of the work and gives the immediate in-

> structions to the workmen is of comparatively small importance, the power of control referred to being the power to control the undertaking as a whole."

In *Fries v. United States*, 6 Cir., 1948, 170 F. 2d 726, where again Your Honors refused certiorari, 336 U.S. 954, the United States had in its employment the negligent servant and had an interest in the performance of the work being done at the time of the casualty, and the Court of Appeals nevertheless held him the servant of the special employer alone because he had been furnished to that employer to do that employer's work.

Nor can it be rightfully contended here that Bay-Houston Towing Company is not responsible for the pilot Gray's actions because Gray received part of the sum paid Bay-Houston Towing Company by respondent Maritime Overseas Corporation for his services.

This is plainly shown by the decision in *Ellis v. Dannen Grain & Milling Co., Inc.*, 7 Cir., 1960, 275 F. 2d 352, where the negligent driver normally drove a truck for a concern that hauled grain from the mill. On the occasion of the casualty, he was using his own car to get machinery parts for the mill. The mill was held responsible, the Court of Appeals saying:

> "A servant who is employed by one person may with his consent be loaned to a third person to render a special service and thereby become the servant or employee of the third person in the performance of such special service."

Petitioner urges finally that the decisions below holding it (and not Bay-Houston Towing Company) responsible

are directly in conflict with the following cases in other circuits:

*Parks Steamship Co. v. Cities Service Oil Co.*, 2 Cir., 1951, 188 F. 2d 804, cert. den. 342 U.S. 862, is a case strikingly like the instant one. In that case the district court found that the ship had employed and was responsible for the pilot who anchored her in a foul berth. The charter party provided however that the *charterer* (*not* the owner) would provide a safe anchorage, and therefore the Court of Appeals held that the pilot was the *charterer's* servant for whose negligence the charterer was responsible under the agreement, even though he had actually been engaged by the ship's agent. The Court of Appeals so holds, at page 806:

> "The district court found that pilot Cleverly was employed by the libellant and not by the charterer. But this finding is immaterial to the decision if, as we hold, the charterer had the duty to procure a specific anchorage within Hingham Bay. Having covenanted that it would be a 'safe place,' the respondent was responsible for the conduct of Cleverly as a 'borrowed servant.' Although in the libellant's employ, the pilot was performing a service for which the charterer was responsible."

What more apt words could here be used to establish the responsibility of Bay-Houston Towing Company rather than that of petitioner for the pilot's acts?

The other case with which the decisions below are also clearly in conflict is *States Marine Corporation of Delaware v. Victory Carriers, Inc.*, 9 Cir., 1959, 272 F. 2d 463, where the *charterer who furnished to the vessel* owner the negligent pilot (a tugboat captain employed by the towing

company) was held required to indemnify the vessel owner. Quoted with approval was the following language from the decision in *The West Eldara*, 2 Cir., 104 F. 2d 670, cert. den. 308 U.S. 607:

> "On the contrary, . . . one who is under contract to dock or undock a vessel is responsible as principal to the owner of the ship for the negligence of the agent whom the contractor places on the ship in charge of the operations."

## CONCLUSION

Petitioner respectfully submits that there can be no other result here if the settled law be followed in the circumstances of the instant case than that petitioner G. & H. Towing Company be found not responsible for nor liable for the actions of the pilot Emmett Gray while directing the towing operation which Bay-Houston Towing Company had solemnly contracted with the vessel's operators to perform and in the performance of whose contract Gray was then acting and which company was then his master under the doctrine of *repondeat superior.*

Respectfully submitted,

ROYSTON, RAYZOR & COOK
Cotton Exchange Building
Galveston, Texas

ROBERT EIKEL
1910 Tennessee Building
Houston 2, Texas

By Robert Eikel
*Attorneys for Petitioner*

ROBERT EIKEL,
*Of Counsel*

## CERTIFICATE (Rule 58)

I certify that the within petition for rehearing of the order of the Honorable the Supreme Court of the United States denying the petition for writ of certiorari to issue to the Honorable the Court of Appeals for the Fifth Circuit entered October 9, 1961, is presented in good faith and not for delay and is restricted to the grounds set forth in Rule 58 of the Supreme Court Rules, namely intervening circumstances of substantial effect or other substantial grounds available to petitioner and not previously presented.

Robert Eikel

ROBERT EIKEL
1910 Tennessee Building
Houston 2, Texas
*Attorneys for Petitioner*

## CERTIFICATE OF SERVICE

I hereby certify that service of the within petition was made upon Armstrong, Bedford & Lambdin, 201 National Hotels Building, Galveston, Texas, and McLeod, Mills, Shirley & Alexander, 801 Santa Fe Building, Galveston, Texas, attorneys for respondents other than Maritime Overseas Corporation, and Eastham, Watson, Dale & Forney, 538 Mellie Esperson Building, Houston, Texas, attorneys for respondent Maritime Overseas Corporation, claimant of the M/V HAR CANAAN, by placing copies thereof properly addressed to each of them in the United States mail with adequate postage affixed thereto.

Robert Eikel

Robert Eikel

## APPENDIX I.

IN THE
## UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 18619

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EMMETT GRAY, G & H TOWING COMPANY and MARITIME OVERSEAS CORPORATION,
*Appellants*

v.

EDWIN E. JOHANSSON, KANSAS CITY BRIDGE COMPANY, MERRITT-CHAPMAN & SCOTT CORPORATION, and PELICAN ISLAND DEVELOPMENT CORPORATION,
*Appellees*

---

**Appeal from the United States District Court for the Southern District of Texas**

---

(March 15, 1961)

---

Before TUTTLE, Chief Judge, HUTCHESON, Circuit Judge, and CLAYTON, District Judge.

HUTCHESON, Circuit Judge: This appeal is from findings and a judgment in admiralty in favor of the libellants, in a suit brought by them as owners of pipe lines, for damages resulting from their negligence destruction in the course of shifting the M/V Har Canaan as a dead ship to a slip in Galveston Harbor.

A great deal of testimony was taken on the issue of fault, and the district judge made full findings in effect that the destruction of the pipe lines was due to the negligence of the respondent, Emmett Gray, port captain for G & H Towing Co., who was furnished by it as a pilot for the dead ship movement.

Based on these findings, the court adjudged: (1) Gray liable; (2) the Har Canaan liable in rem; (3) Maritime Overseas, owner of the Har Canaan, not liable in personam; and (4) G & H Towing Co., the employer and furnisher for the movement of Emmett Gray, its port captain liable in personam. He als denied and awarded indemnity as follows:

> "Thus, as to the liability over between the several respondents, the following conclusions are made.
>
> "6. G & H Towing Company and Captain Emmett Gray are not entitled to indemnity from Maritime Overseas Corporation, or from the Har Canaan, for any payment they may be required to make under the decree to be entered herein.
>
> "7. Maritime Overseas Corporation, as claimant of the Har Canaan, is entitled to indemnity from Captain Emmett Gray, individually, and from G & H Towing Company for any liability it will have to libellants under the decree to be entered herein. The liability of Captain Gray and G & H Towing Company to Maritime Overseas will be joint and several."

Gray, as the respondent held primarily liable, here insisting that the findings and conclusions, that he was negligent in handling the ship so as to cause injury to the pipe lines, are clearly erroneous, launches massive attacks upon the findings, that he was negligent, and urges upon

us that the cause of the injury to the pipe lines was negligence not on his part but on the part of the pipe line owners in not properly laying and maintaining the lines in place and in not clearly and properly marking their location.

The other appellants join him in this attack and argue mightily that the district judge has misconceived what actually occurred and that the findings of negligence are against the truth and right of the case.

The G & H Towing Company, in addition to its attack upon the negligence findings of the court, strongly attacks the court's conclusion, that the clause in its contract providing in effect that it would not be liable for the acts of pilots furnished by it would not avail it, as an erroneous conclusion of law, and urges that, because of that clause, Gray's negligence would not be imputed to it, and it could not, therefore, be held liable for it.

The Har Canaan and Maritime Overseas Corporation, its owner, argue vigorously that they were not responsible and cannot be held liable for the negligence of the pilot. Each of these argues that the conclusions on indemnity are wrong.

For the reasons hereafter stated, we are of the opinion: that the district judge was right throughout in his findings of fact and in his conclusions of law, that Gray was guilty of negligence in causing the anchor to be dropped upon the pipe line, and that, as a result of his negligence, he and the other respondents found liable are liable to the pipe line owners for the damage done them; and that the right of exoneration, action over, or indemnity is as he concluded it to be.

Taking up first the primary question of whether the findings of fact as to fault should be set aside, we think

it sufficient to briefly say that the matter of fault or negligence is a disputed issue, and that, on the record as a whole, there was ample evidence for the district judge to find, as he did: that Gray and, therefore, the Har Canaan and its owners, and the G & H Towing Company knew that the pipe lines were laid in the slip under permit; that the burden was heavily upon them to show, in defense of their act in dropping the anchor, that they had made proper inquiries as to just where they were laid; and that due care had been used in dropping the anchor to avoid striking and injuring them in the course of the ship's movement; that, in short, Gray and the other respondents could not shift liability for the affirmative acts causing injury to the pipe line as a result of dropping the anchor on the lines by complaining here that, as matter of law, the pipe line owners were at fault in not marking more precisely the position of the lines, or that the findings that they were not are clearly erroneous.

In declaring these views, we are not holding that the district judge could not have found the fault and responsibility as these contend he should have. We are holding, though, that it was entirely proper for the district judge to find, as he did, upon the whole facts, that the proximate cause of the injury sued for was the failure of Gray to use due care to find out just where the pipe lines were, in that, without soundings or otherwise taking adequate precautions to precisely locate the pipe lines, he dropped the anchor on them with damaging results.

With the highly important question of primary fault for the injury thus disposed of by our holding that the court's findings as to Gray's negligence are not clearly erroneous and must be approved, we turn to the other questions raised by the several appellants.

The first of these is the complaint of all the appellants, including Gray, that the district judge erred in refusing to give effect to the pilotage clause[1] in the towing contract, providing in effect that neither Gray nor the Towing Company, his employer, would be liable for the negligence of Gray, its employee, indeed its port captain.

Of this, we think it sufficient to say that we agree with the district judge's conclusion that the libellants, strangers to the contract, cannot, of course, be held bound, or in any way affected, by its terms; and also with his conclusions with respect to actions over for exoneration or indemnity that appellants are bound and precluded by the decision and holding in *Bisso v. Inland Waterways Corporation*, 349 U.S. 85, that such a clause is invalid. In addition, we think it clear that respondents' reliance on *Sun Oil Co. v. Dalzell Towing Co.*, 287 U.S. 291, will not at all do there, both because of the decision in the Bisso case, which, on full consideration, rejected the Dalzell case as authority for the position here taken, and because the Dalzell case dealt with pilotage in its real sense of service rendered by publicly licensed involuntary or compulsory pilots, and Gray in the case was not such a pilot. Though called a pilot, he was merely the person in direct command with respect to a dead ship towing operation

---

1 "Whenever any pilot goes on board a vessel to assist her movement or handling, he becomes and continues to be solely the servant, agent and employee of said vessel, and her owners and/or charterers in respect of all acts done by him, or all omissions, and all orders given by him to any tugs engaged or to said vessel, or otherwise, in the movement or handling of said vessel, or in connection with any decisions made by said pilot as to the manner or method of handling said vessel, and none of the tugs or their owners, agents, masters, servants, employees or charterers shall be responsible or liable for any act or omission of said pilot, or for any claims or damages caused by or resulting for (sic) any act, omission or order of said pilot."

who, as such, conducted the operation by coming on board. Look at it as one will, nothing more can be made of this case than that it is a mere case of a towing service furnished by G & H Towing Company and performed by its port captain who, though denominated "pilot", was merely the one in charge of a dead ship towing operation who conducted it by coming on board the dead ship, and the effort to limit the liability of the towing company for the acts of those furnished by it to conduct the towing maneuver must fail here, just as it failed in the Bisso case, and the judgment denying effect to the invoked clause of the contract must be affirmed.

We are also of the opinion that there is no merit whatever in Gray's claim that he is protected from liability for his own fault by the terms of the contract, even if it were otherwise regarded as valid. Neither is there any merit in the claim of Maritime Overseas Corporation and Har Canaan, that they are not liable for Gray's acts because, under the law governing pilotage, they could not be held liable for the pilot's negligence. We find nothing in the cases cited by them, nothing in the cases generally, which supports this claim. Indeed, we think the cases have settled the law to the contrary, even in a case of true involuntary or compulsory pilotage. Cf. *Publicker Industries, Inc. v. Tug Boat "Neptune" Company et al*, 171 F.(2) 48; *United States v. Chris Nielson*, 349 U.S. 129. We are, therefore, of the clear opinion that the court's findings of fact as to fault in the injury to the pipe lines cannot be set aside as clearly erroneous; that his conclusions, that the respondents held liable were in fact and in law responsible to the libelants, are correct and may not be set aside; and that all questions as to actions over for exoneration and/or indemnity were correctly decided, and the decree is in all things AFFIRMED.

## APPENDIX II.

No. 18619

### JUDGMENT (OF THE COURT OF APPEALS)

Extract from the Minutes of March 15, 1961

EMMETT GRAY, G. & H. TOWING COMPANY, and MARITIME OVERSEAS CORPORATION,
*Appellants*

v.

EDWIN E. JOHANSSON, KANSAS CITY BRIDGE COMPANY, MERRITT-CHAPMAN & SCOTT CORPORATION and PELICAN ISLAND DEVELOPMENT CORPORATION,
*Appellees*

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, Emmett Gray and G. & H. Towing Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

## APPENDIX III.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW (OF THE UNITED STATES DISTRICT COURT)

### STATEMENT OF THE CASE

This proceeding is brought in rem against the Israeli vessel HAR CANAAN, claimed by Maritime Overseas Corporation; in rem against the Tug J. R. GUYTON, owned by Bay-Houston Towing Company; in rem against the Tugs JUNO and ALBATROSS, owned by Suderman & Young Towing Company; and in personam against Bay-Houston Towing Company; Suderman & Young Towing Company, and G. & H. Towing Company, the charterer and operator of the three tugs named, and Emmett Gray, an individual, employed as Port Captain by G. & H. Towing Company. The Libellants are Pelican Island Development Corporation, the owner of the pipeline work which was damaged in this casualty; Merritt-Chapman & Scott Corporation, general construction contractor for the Pelican Corporation; Edwin E. Johansson, sub-contractor under Merritt-Chapman & Scott for construction of water and sewer pipelines between Galveston Island and Pelican Island; and Kansas City Bridge Company, sub-contractor under Johansson for the cross channel portion of this construction which was immediately involved. By impleading petition of cross-libel, Maritime Overseas Corporation asks indemnification from the Tugs J. R. GUYTON, JUNO, and ALBATROSS, and from all the named respondents, for any recovery libellants may obtain against the HAR CANAAN or her claimant, and by impleading petition or cross-libel, those same respondents jointly and severally ask indemnification from Maritime Overseas Corporation for any recovery libellants may obtain against them.

A trial having been had on the issues of liability alone, and having received and considered the evidence and the briefs and arguments of the proctors for the respective parties, these Findings and Conclusions are made by me pursuant to Admiralty Rule 46½.

## FINDINGS OF FACT

1. The channel between Galveston Island and Pelican Island is a part of the Galveston harbor. Slip A is immediately west of Pier 41 on the Galveston Island or southerly side of this channel. The width of the channel at this point is approximately 1400 feet, and the channel at this point is dredged to a depth of approximately 35 feet between the harbor lines, a distance of 1125 feet.

2. On April 12, 1956, a permit was issued to libellants through the office of the United States Corps of Engineers for the construction of water and sewer mains, each approximately 12 inches in diameter, to be laid in a trench across the Galveston channel, and at a depth not less than 50 feet below mean low water. By amendment of the permit on December 16, 1957, the center line for this crossing, at the southerly or Galveston Island end, was established at a point which the evidence shows to be approximately 18 feet eastward from the northeast corner of Slip A, and the line of bearing for the crossing from that point was N 10° 23′ 25″, or almost directly across the channel to a point opposite on Pelican Island.

3. Acting under this permit, as originally issued and so amended, Merritt-Chapman, as general contractor for the Pelican Corporation, contracted with Johansson for the construction of these pipelines, and Johansson in turn subcontracted to Kansas City Bridge Company that part of the work which involved laying the sub-aqueous lines. A

trench was dredged across the channel to the necessary depth of 51½ feet, which was approximately 16 feet deeper than the normal depth of the channel between the harbor lines. The dredged trench followed the center line of the crossing as established by the amended permit, and extended about 50 feet to either side of that centerline. This portion of the work was completed prior to November 27, 1957, and soundings of the trench were made by the United States Corps of Engineers on that date. Late in 1957, Kansas City Bridge Company began receiving sections of the steel pipe to be laid at a job site at the Pelican Island end of the crossing, and for sometime thereafter was engaged in welding short sections of this pipe into 400 foot lengths, testing the welds, and covering this pipe with a protective wrapping. Meanwhile, in December, 1957, and January, 1958, a large "whirley" or crane barge was used to dredge the ends of the trench outside of the harbor lines. A cavein of the bulkhead at the northeast corner of Slip A, caused by this dredging, was repaired in December, 1957. In January, 1958, a bulldozer was used to cut a 400 foot ditch on Pelican Island into which the long sections of pipe could be placed preparatory to their being drawn into the water.

4. On January 27, 1958, pulling cables were stretched across the channel, and the leading section of each pipeline was hung below a barge at the Pelican Island end. On the ensuing four days, the two pipelines were drawn behind this barge and laid in the trench across the channel which had been dug to receive them. On January 31, 1958, the channel was cleared again for marine traffic. Between February 6 and February 25, 1958, the whirley barge was employed as riser sections were welded to the two pipelines, first at the Galveston Island end, then the Pelican Island end. Between February 27 and March 4, 1958, divers were used to walk the pipelines and ascertain their position

and alignment. The whirley barge was used to uncross the lines at one point in mid-channel during this work. On March 5, the lines were filled with water for hydrostatic pressure tests, and they remained filled with water until the later casualty.

5. The remaining work on the pipelines prior to the casualty in suit, which occurred on March 21, 1958, was concerned with the construction of a thrust block over the risers at the Galveston Island end, just east of the entrance to Slip A, and immediately in front of the bulkhead between Slip A and Pier 41. Sleeves were welded around the risers where they passed through the bulkhead, a wooden form was constructed for the thrust-block, and this was lowered into place over the risers after the ground had been cleared by a diver. On the morning of March 21, and at the time of the casualty, concrete was being poured for this thrust-block. A diver was then below directing this work, and his tenders were on the deck of the whirley barge which lay at the northeasterly corner of Slip A, and partly into that Slip. The crane of the whirley barge extended over the work area. On the channel side of the bulkhead, a small "sea mule" and a larger flat barge were immediately above and adjacent to the work area, and personnel employed by Kansas City Bridge Company were on these work boats as well as upon the bulkhead.

6. In addition to the physical evidence already related showing the construction and placement of these pipelines across the channel, and to the notice thereof contained in the permit issued by the United States Corps of Engineers, at least three "Notices to Mariners" had been issued by the Corps of Engineers, on November 15, 1957, December 23, 1957, and January 16, 1958 advising of this construction. On December 30, 1957, double signboards, measuring

7 feet 10 inches, by 16 feet, on each face, and bearing large letters reading "WARNING—PIPE CROSSING—DO NOT DRAG ANCHOR" were placed on either side of the channel, the sign on the Galveston side being centered about 31 feet east of the center line established for the crossing, and the sign on the Pelican side being centered about 115 feet east of this center line. The legend of either sign was easily visible to any ship proceeding up or down the channel.

7. The Israeli ship HAR CANAAN is a dry-cargo vessel of 10,311 gross tons. Her length is 515 feet 2 inches, and her beam is 66 feet 7 inches. She carried two anchors forward, each weighing approximately 8900 pounds. At the time of this casualty the ship was light and drawing approximately 10 feet. Her forecastle deck was approximately 40 feet above the water line, her bridge deck was approximately 60 feet above the water line, and the horizontal distance from the hawse-pipes in the bow of the ship to the bridge was about 200 feet.

8. On the morning of March 21, 1958, the HAR CANAAN was fully manned, equipped and seaworthy excepting that her main engines were shut down for repairs. Her agents at Galveston, Strachan Shipping Company, gave an order to Bay-Houston Towing Company to furnish three tugs and a pilot to move the HAR CANAAN as a "dead" ship from Pier 15, where she was then lying, to Sunset Grain Elevator at the inner end of Slip A. The distance between these points was approximately two miles.

9. Bay-Houston Towing Company held a contract with Maritime Overseas Corporation, operator of the HAR CANAAN, to move its vessel on stated rates and terms.

10. The only towing companies offering tug service for shifting ocean going vessels in the port of Galveston at

the time in question were Bay-Houston Towing Company, Suderman & Young Towing Company, and Intracoastal Towing & Transportation Company. Each of these companies owned a number of harbor tugs. These three "owning companies" competed with one another in the sense that they solicited their own business, made their own contracts, and invoiced the towed vessels for the service performed. However, the services which were available to the owners and operators of ocean going vessels in the port of Galveston from the three "owning companies" were identical. This comes about in that the three "owning companies" did not operate their own tugs, but all three chartered, bareboat, their tugs to G. & H. Towing Company, an operating Company, which was owned jointly by the three "owning companies". In carrying out the orders for towing service, G. & H. Towing Company would use the tugs which were most readily available and convenient, without regard to the ownership, and regardless of which of the three "owning companies" may have had the contract with the vessel to be towed. The contracts between the "owning companies" and the vessels (or their owners or charterers) expressly allowed for performance in this manner. The contracts offered by the three "owning companies" (their owners or charterers) were identical in terms, and upon a single printed form. The rates too were the same, save for an exclusive contract a ten percent (10%) reduction was allowed. The contract with Maritime Overseas was of this nature, and carried the ten percent (10%) discount.

11. Among the other provisions of this contract, to which reference is made for all purposes, was the following provision, which by reason of its significance is quoted here:

"Whenever any pilot goes on board a vessel to assist her movement or handling, he becomes and continues to be solely the servant, agent and employee of said vessel, and her owners and/or charterers in respect to all acts done by him, or all omissions, and all orders given by him to any tugs engaged or to said vessel or otherwise, in the movement or handling of said vessel, or in connection with any decisions made by said pilot as to the manner or method of handling said vessel, and none of the tugs or their owners, agents, Masters, servants, employees or charterers shall be responsible or liable for any act or omission of said pilot, or for any claims or damages caused by or resulting for any act, omission or order of said pilot."

12. Captain Emmett Gray, one of the respondents, is full time and salaried employee of G. & H. Towing Company. Prior to March 1, 1958, he had served for several years as night dispatcher for G. & H., and on that date he became Port Captain for G. & H., and was placed in full charge of the dispatching office. Since 1932, he has held an unlimited pilot's license covering Galveston harbor, as well as other adjacent waters. As Port Captain for G. & H., he was the "dead ship" pilot assigned by his employer for all shifting of dead ships within Galveston harbor when the tugs operated by G. & H. were employed. Out of the fixed charge made for shifting a vessel without her power, Captain Gray received a percentage of this charge (in addition to his salary from G. & H.), with the balance of the charge going to the company owning the contract (one of the three "owning companies"), and G. & H. as the operating company. In this regard, it should be noted that Captain Gray's duties with G. & H. did not contemplate, nor did he accept, employment as a harbor or branch pilot (meeting incoming vessels at the sea buoy, and bringing

them, usually under their own power, into Galveston harbor, with converse service for out going vessels.)

13. On the morning of March 21, 1958, Captain Gray boarded the HAR CANAAN as she lay at Pier 15, and assumed the conning of the vessel. He informed her Master of his intention to use the port anchor in turning the ship into Slip A, and the First Mate of the HAR CANAAN, with a deck crew, was stationed in her bow and the anchor made ready for use on orders from the bridge. Thereupon, the HAR CANAAN was moved westerly down the channel toward Slip A, with the Tugs JUNO, ALBATROSS, and J. R. GUYTON, made up alongside and providing the only motive and directional power for the vessel under orders given directly to them by Captain Gray from the bridge of the HAR CANAAN. The Master of the HAR CANAAN was also upon the bridge of his vessel at all times during the maneuver, and he relayed to the First Officer in the bow and the crew orders as received from Captain Gray during the maneuver, including the order to let go the port anchor. The helm of the HAR CANAAN was lashed, as her propelling machinery was shut down, and she had no steerageway of her own.

14. Shortly after noon, as the HAR CANAAN reached the vicinity of Pier 41, she was navigated by the tugs at an angle from the center of the channel toward the opening of Slip A. Captain Gray then ordered the port anchor to be dropped, with one shot of chain, and this order was promptly executed. Subsequently, the bow of the ship, with anchor down, continued to move toward the northeast corner of Slip A and came within about 10 feet of contact with the whirley barge in that position before the anchor was heaved in some five minutes later. Almost immediately after the anchor was dropped, violent move-

ments of the sewer pipe, which was westerly of the two pipes being laid, were perceptible to the workmen on shore as well as to the diver working underwater. Sounds such as would have been caused by the breaking of the pipeline were also heard by the workmen on shore when the anchor of the HAR CANAAN was heaved in. Subsequent investigations did show that the sewer line was badly bent or broken, but still in the trench, at a point approximately 250 feet out in the channel, and was completely broken at a point only 90 feet from the bulkhead, with the ends of the pipe at this point pulled out of the trench and lying in front of the opening to Slip A.

15. Immediately prior to the arrival of the HAR CANAAN at Slip A on the 21st of March, 1958, the water and sewer lines were being constructed by libellants in accordance with the permit duly issued for that purpose, and these two pipelines were properly situated at the depth and in the position prescribed in such permit, as amended December 16, 1957.

16. The port anchor of the HAR CANAAN was dropped on, or dragged over, one, or perhaps both of said lines, on March 21, 1958, breaking the sewer line, the more westerly of the two, and causing damages to each of the libellants in amounts to be determined.

17. Captain Gray was negligent in giving the order to drop the anchor when he should have been aware of the construction and presence of the pipelines from general knowledge, the Notices to Mariners, and the prominent warning signs which were plainly visible.

18. Captain Gray was not misled by the position of the warning signs, and was negligent in giving the order to drop the anchor without regard to the presence of the pipelines.

19. The tide was nearing the end of the ebb, and the wind was from the southeast at force three, although neither weather, wind nor tide were factors of any consequence in the handling of the HAR CANAAN at the time, and no emergency or necessity required that the anchor be dropped at the place where it was dropped.

20. Captain Gray was acting within the scope and course of his employment by G. & H. Towing Company at all times material hereto, and was not a loaned servant to the vessel or her operators at such times.

21. The Master of the HAR CANAAN was not negligent in failing to intervene, or displace, the pilot when the order to drop the anchor was issued by Captain Gray, because the situation was not one of obvious danger, and the pilot's lack of knowledge was not manifest so as to warrant intervention by the Master.

22. Neither the Master nor crew of the HAR CANAAN was negligent, or at fault, in any particular.

23. The assisting tugs were properly maneuvered by their crews in accordance with orders given them, and were in no way at fault.

## CONCLUSIONS OF LAW

1. Captain Emmett Gray is personally liable for his own acts of negligence.

2. G. & H. Towing Company is liable for the negligence of Captain Gray as its employee.

3. The HAR CANAAN is liable, *in rem*, for the negligence of Captain Gray as her pilot.

4. Libellants are entitled to recover their provable damages, as their interests may appear, from the HAR CANAAN, *in rem*, from G. & H. Towing Company, *in personam*, and from Emmett Gray, individually. The liability so decreed shall be joint and several.

5. Libellants are not entitled to recover from the tugs J. R. GUYTON, JUNO, or ALBATROSS, in rem, or from Bay-Houston Towing Company or Suderman & Young Towing Company, in personam.

The foregoing Conclusions dealing with the liability of the respondents to libellants, in my judgment, follow quite readily from the Findings of Fact set out above, and present no serious question of law.

The libellants obviously were not parties to the contract of towage between Maritime Overseas and Bay-Houston, and the liability of respondents to libellants has been determined without regard to the provisions of such contract.

In considering the question of liability over between the various respondents, however, the validity of the so-called "pilotage" clause (Finding No. 11) is placed in issue.

Maritime Overseas contends such provision is void, as contrary to public policy, relying primarily on *Bisso v. Inland Waterways Corp.*, 349 U.S. 85, and the related opinions immediately following. Respondents G. & H. and Captain Gray in supporting the validity of the exculpatory provisions rely primarily on *Sun Oil Co. v. Dalzell Towing Co., Inc.*, 287 U.S. 291.

Under the facts found above, in my judgment, *Bisso* is controlling, by reason of the following circumstances, which I consider to have been stressed by the Court; (a) the vessel was being moved entirely under the power of the furnished tugs, and without power or control of her own; and (b) by reason of the monopolistic situation which prevailed in the vicinity of Galveston harbor, whereby a vessel had no freedom of choice in the type of towing contract offered, but must accept a contract with such exculpatory provisions if in fact it was to secure the assistance of tugs in its movement. Here, as in *Bisso*, the vessel was under complete control of Captain Gray, as an em-

ployee of the towing company, and such towing company did "have power to drive hard bargains."

The instant case is distinguished from *Dalzell* in these same particulars, for there the Court points out (a) "It was not shown that respondent was to have or at any time did have control of the tanker or that it agreed or undertook to do more than to furnish tugs to assist her while using her own propelling power."; and (b) "Respondent had no exclusive privilege or monopoly in respect of the services that petitioner desired to have performed for its tanker. . . . There is nothing to suggest that the parties were not on equal footing or that they did not deal at arm's length."

Thus, as to the liability over between the several respondents, the following Conclusions are made.

6. G. & H. Towing Company and Captain Emmett Gray are not entitled to indemnity from Maritime Overseas Corporation, or from the HAR CANAAN, for any payment they may be required to make under the decree to be entered herein.

7. Maritime Overseas Corporation, as claimant of the HAR CANAAN, is entitled to indemnity from Captain Emmett Gray, individually, and from G. & H. Towing Company for any liability it will have to libellants under the decree to be entered herein. The liability of Captain Gray and G. & H. Towing Company to Maritime Overseas will be joint and several.

The Clerk of the Court will furnish counsel of record a copy hereof.

Counsel will present appropriate order promptly.

Done at Houston, Texas, this 24th day of December, 1959.

BEN C. CONNALLY
United States District Judge

# APPENDIX IV.

**TUGS:**

C. R. HADEN
H. O. WEATHERBEE
J. R. GUYTON
JENNIFER GEORGE

LAURA HADEN
LUCY HADEN
R. T. McDOW
R. J. WALES

W. A. WANSLEY

[redacted] BARBARA GEORGE
J. HARRIS MASTERSON

**TUG BOAT HARBOR TARIFF**

EFFECTIVE APRIL 10, 1957

# BAY-HOUSTON TOWING CO.

**GALVESTON**

504 National Hotel Bldg.
Phone 5-9381
Pier 10 Wharf Phone: 3-4673

Night Phones: { 3-4673 - 5-7534
5-6542

**HOUSTON**

811 Cotton Exchange Building
Phone: CApitol 2-6231
Dock Phone: WAlnut 8-5406

Night Phones: { JAckson 4-8635
UNderwood 9-2701

**CORPUS CHRISTI**

Ore Dock
Phone: TUlip 4-8791 & TUlip 3-7843
Night Phone: 53 Ingleside

**Gulf Coast Towing, Harbor Towing, Oil Lightering and Transportation**

**OIL BARGE IFS 201**

CORRESPONDENCE AND WORK SOLICITED

**B Tug Calls:**_____ **(Long, Short, Long)**

**H Tug Calls:**_____ **(Long, Short, Long, Short)**

# TOWBOAT HARBOR TARIFF
## GALVESTON, TEXAS CITY AND HOUSTON SHIP CHANNEL

## ASSISTING VESSELS

### GALVESTON — TEXAS CITY

| | |
|---|---|
| Docking or Off Docking at Galveston: per tug | $ [illegible] |
| Shifting Docks in Docks: per tug | [illegible] |
| Off docking and to Bolivar Roads: per tug | [illegible] |
| Off docking and to Texas City and Docking: per tug | [illegible] |
| Bolivar Roads to Texas City or vice versa: per tug | [illegible] |
| Docking, Off Docking, or Shifting at Texas City: per tug | [illegible] |
| Towing vessels or ocean going barges from Galveston Bay to Bolivar Roads, Texas City or between docks: per tug. Per hour or fractional part | [illegible] |
| Running time chargeable | |
| Shifting derrick barges: Galveston Harbor | [illegible] |
| Galveston to Bolivar Roads | [illegible] |
| Galveston to Texas City | [illegible] |
| Dockage: Shifting Vessels Without Own Power | [illegible] |

### SPECIAL SERVICES

Fueling on ships at wharf:

When tug is engaged in assisting vessel: one half hour free period first visit succeeding hours or fractional part — $ [illegible]

When Tug not engaged in assisting vessel: Per hour or fractional part — [illegible]

Running time chargeable

Furnishing and delivering water to ships at anchorage: Per Trip — [illegible]

### IN TOWING VESSELS OR BARGES TOWED VESSELS TO FURNISH HAWSERS

When Tug ordered to certain points to perform services and orders cancelled after Tug leaves wharf, minimum charges of $[illegible] at Galveston and $[illegible] at Texas City will be made.

### DETENTION

Detention caused by vessel not being ready at time specified when tug ordered to be charged for at $[illegible] per hour with one half hour free time allowed.

## HOUSTON SHIP CHANNEL

| BETWEEN | |
|---|---|
| Morgan's Point and Ordnance Depot, Shell, Port Adams, Todd Shipyards or Sheffield | $[illegible] |
| Morgan's Point and Baytown | [illegible] |
| Bolivar Roads and Morgan's Point or Baytown | [illegible] |
| Bolivar Roads and Ordnance Depot, Shell, Port Adams, Todd Shipyards or Sheffield | [illegible] |
| Galveston and Baytown | [illegible] |
| Texas City and Baytown | [illegible] |
| Houston and Norsworthy, Crown, Galena or Sinco | [illegible] |
| Houston and Todd Shipyards, Port Adams, Sheffield, Shell or Ordnance Depot | [illegible] |
| Galveston and Houston | [illegible] |
| Bolivar Roads and Houston | [illegible] |
| Texas City and Houston | [illegible] |
| Morgan's Point and Houston | [illegible] |
| Houston and Baytown | [illegible] |
| Baytown and Ordnance Depot, Shell, Port Adams, Todd Shipyards or Sheffield | [illegible] |

(Norsworthy, Crown, Galena, Sinco, Clinton, Manchester take same rates as Houston from above points.)

Above charges including Docking or Off Docking

# TOWBOAT HARBOR TARIFF
# GALVESTON, TEXAS CITY AND HOUSTON SHIP CHANNEL

## HOUSTON SHIP CHANNEL
## DOCKING AND OFF DOCKING

Docking or off Docking at any point between Manchester Terminal and Turning Basin, both inclusive $
Docking or off Docking at any point below Manchester to Navigation, inclusive
Docking or off Docking at points below Navigation to Galveston Depot, inclusive
Docking or off Docking at Baytown

## SHIFTING

Shifting vessels between docks at Manchester Terminal and Turning Basin, both inclusive, per tug $
Shifting vessels between points below Manchester to Navigation, inclusive, per tug
Shifting vessels from one point to another on the same dock between points below Navigation to Galveston Depot, inclusive
Shifting vessels between points below Navigation to Galveston Depot, inclusive, per tug
Shifting from one Berth to another at Baytown

## MISCELLANEOUS SERVICES

Pulling on ships account:
When tug is engaged in assisting vessel, one half hour free pulling time, each succeeding hour or fractional part
When tug is not engaged in assisting vessel, per hour or fractional part
Running time chargeable
The above rates to apply for a single tug
Tugs ordered to stand by but not put to work will be charged for the same as Docking
Rates for towing dead ships between points on Houston Ship Channel other than above specified will be charged for on pulling time basis
All towed vessels to furnish towing hawsers
Holding vessels off docks and reducing shifting rates to apply
Mooring to or holding vessel in slip or alongside bank waiting for berth during tide rate per hour
When Tug ordered to certain points to perform services and orders cancelled after Tug leaves berth, minimum charge of $60.00 will be made
Furnishing and delivering water to ships: Per Trip

## DETENTION

Detention caused by vessel not being ready at time specified when tug ordered to be charged for at $ per hour, with one half hour free time allowed

## PORT ARANSAS—CORPUS CHRISTI

Docking, off docking or shifting at Harbor Island $
Assisting between Harbor Island and Corpus Christi
Sea to Ingleside
To dock at Ingleside
When tug is at Ingleside
When tug is not at Ingleside
Assisting between Ingleside and Harbor Island
Assisting between Ingleside and Corpus Christi
Sea to Corpus Christi and dock
From outside bridge at Corpus Christi and to dock at Turning Basin, starting
To dock at wharves in Corpus Christi Turning Basin
Shifting in Corpus Christi Turning Basin
Sea to Terminal of the Reynolds Metal Company, Near Ingleside
Docking or undocking at the Terminal of the Reynolds Metal Company, Near Ingleside
From outside bridge to all points between Nueces Docks and Oil Docks, all inclusive
From Turning Basin inside the bridge to above docks
To docking or off docking at above docks
To shifting between above docks, or between above docks and docks in Corpus Christi Turning Basin
Pulling on ships account:
When tug is engaged in assisting vessel, one half hour free pulling time, each succeeding hour or fractional part
When tug is not engaged in assisting vessel, per hour or fractional part
Running time chargeable
When Tug ordered to certain points to perform services and orders cancelled after Tug leaves berth, minimum charges of $60.00 at Corpus Christi and Harbor Island and $90.00 at Ingleside will be made
The above rates to apply for a single tug
Detention: One half hour free time thereafter, per hour
Furnishing and delivering water to ships at Harbor Island, Ingleside or Corpus Christi: Per Trip

## OVERTIME RATE

20% will be added to the tariff rates for all work performed between the hours of 5 P.M. and 8 A.M. and for work performed on Sundays and Holidays and Mondays following Holidays.
Overtime Rate to apply when service is started and or completed in an overtime hour.
Starting time will be the time Tug leaves berth and time of completion will be the time Tug returns to berth.

**FORCE MAJEURE**

Neither party shall be responsible for delays, failures or omission hereunder due to strikes, lockouts, labor disturbances, riots, fire, earthquakes, storm, lightning, epidemics, war disorders, acts of God, etc.

The rates quoted herein, and the furnishing of tug power for harbor or other towage undertaken hereunder, are founded on the consideration that this agreement shall not be construed to be a personal contract, and it is understood that

BAY-HOUSTON TOWING COMPANY

and the parties at interest with us shall have the benefit of the exemption from liability contained in the United States Limitation of Liability Statute, Title 46 U.S.C.A. 181 to 184, both inclusive.

_____, 195__

The Bay-Houston Towing Co. offers to meet your steamers upon arrival at Galveston, Houston, Texas City, Corpus Christi, or Port Aransas, and provide tugboat power for your steamers while in port, in accordance with towboat tariff shown herein and conditions named therein.

Should Bay-Houston Towing Co. tugs be not conveniently available for the required services, the said Bay-Houston Towing Co. shall have the right to designate or engage the tugs, and such other tugs and their owners or operators shall be covered by this contract as though they were Bay-Houston Towing Co. tugs.

Whenever any pilot goes on board a vessel to assist her movement or handling, he becomes and continues to be solely the servant, agent and employee of said vessel, and her owners and/or charterers in respect of all acts done by him, or all omissions, and all orders given by him to any tugs engage or to said vessel or otherwise, in the movement or handling of said vessel, or in connection with any decisions made by said pilot as to the manner or method of handling said vessel, and none of the tugs or their owners, agents, Masters, servants, employees or charterers shall be responsible or liable for any act or omission of said pilot, or for any claims or damages caused by or resulting for any act, omission or order of said pilot.

This contract to become effective on the date shown above and to remain in force until _____ and to continue thereafter from year to year until cancelled by either party on an anniversary date of this contract. After written notice, rates named herein may be adjusted in the light of increase or decrease in operating expenses due to changes in laws or regulations and changes in working conditions of labor and labor costs in all branches.

All charges are net, except when services are performed under contract, then a discount of 10% is to apply on all tariff rates.

BAY-HOUSTON TOWING COMPANY

By _____

**ACCEPTANCE**

We accept the offer of the Bay-Houston Towing Co. for all tug power our steamers, or steamers operated for our account, unless otherwise bound by charter may require at the Ports of Galveston, Houston, Texas City, Corpus Christi and Port Aransas, in accordance with the rates and conditions named in tariff shown herein.

_____

By _____

# MICRO

*TRADE* M

PC 134

CARD

MARK ®

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MATTHEW BENDER & COMPANY

MB

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nicrocard